3-26.

SUPREME COURT OF THE UNITED STATES.

No. 89.

WILLIAM BREWSTER, APPELLANT,

vs.

WILLIAM WAKEFIELD.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF MINNESOTA.

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GIDEON, Print.

Territory of Minnesota.—In Supreme Court.

WILLIAM BREWSTER, and EMILY L. BREWSTER, his wife, Michael Hickey, Patrick Donnevan, Isaac Dixon, Alpheus J. Fuller, Mary Richardson, George Fuller, Joseph E. Fullerton, and Richard D. Wood, Josiah Bacon, Lewis W. Haywood, Benjamin V. Marsh, Hart A. Leavitt, and Edward Y. Townsend, partners, under the name and firm of Wood, Bacon & Co., Plff's in Error,
against
WILLIAM WAKEFIELD, Def't in Error.

To the Honorable Moses Sherburne, associate justice of the supreme court of the United States, in and for the Territory of Minnesota.

Application is hereby made to your honor in behalf of the above named plaintiff in error, William Brewster, for the allowance of an appeal to the Supreme Court of the United States from the final judgment rendered in this cause on the 29th day of January, A. D. 1857, at the January term of the court in that year, and entered and perfected on the day last aforesaid.

BRISBIN & BIGELOW,
Attorneys for the said Wm. Brewster.

March 28, A. D. 1857.

An appeal, pursuant to the foregoing application, is hereby granted and allowed in the within entitled cause.

M. SHERBURNE, *Judge.*

Dated St. Paul, M. T., March 28, 1857.

Territory of Minnesota.—In Supreme Court.

WILLIAM BREWSTER, EMILY L. BREWSTER, his wife, Michael Hickey, Patrick Donevan, Isaac Dixon, Alpheus G. Fuller, Mary Richardson, George Fuller, Joseph E. Fullerton, and Richard D. Wood, Josiah Bacon, Lewis W. Haywood, Benjamin V. Marsh, Hart A. Leavitt, and Edward Y. Townsend, partners, under the name and firm of "Wood, Bacon & Co.," Plaintiffs in Error,
against
WILLIAM WAKEFIELD, Defendant in Error.

TERRITORY OF MINNESOTA,
County of Ramsey, ss.

William Brewster, of the city of St. Paul, in said county, being

duly sworn, deposes and says, that the amount in controversy in this cause, in which final judgment was rendered on the 29th day of January, A. D. 1857, at the January term of the court, exceeds the sum of one thousand dollars.

WILLIAM BREWSTER.

Subscribed and sworn to this 25th day of March, 1857.

WILLIAM R. SNIDER,
Notary Public Min. Territory.

(*The foregoing endorsed:*)

Territory of Minnesota. Supreme court. William Brewster and others, pl'tffs in error, against William Wakefield, def't in error. Application for the allowance of an appeal to the Sup. Court United States; and affi't of amt. in controversy. Filed March 28, 1857. G. W. Prescott, clerk. Brisbin & Bigelow, att'ys for Wm. Brewster.

Territory of Minnesota.—Supreme Court.

WILLIAM BREWSTER, EMILY L. BREWSTER, his wife, Michael Hickey, Patrick Donevan, Isaac Dixon, Alpheus G. Fuller, Mary Richardson, George Fuller, Joseph E. Fullerton, and Richard D. Wood, Josiah Bacon, Lewis W. Haywood, Benjamin V. Marsh, Hart A. Leavitt, and Edward Y. Townsend, partners, under the name and firm of "Wood, Bacon & Co." Plaintiffs in Error,

against

WILLIAM WAKEFIELD, Defendant in Error.

And now, on this 28th day of March, A. D. 1857, the above named plaintiff in error, William Brewster, after a final judgment rendered in this cause on the 29th day of January, A. D. 1857, at the January term of the court in that year, comes and shows to the court that the amount in controversy exceeds the sum of one thousand dollars, and thereupon claims an appeal from the said final judgment to the Supreme Court of the United States, next to be holden at Washington, on the first Monday of December, A. D. 1857, and the same is accordingly allowed; and the appellant is ordered to serve the usual citation according to law.

By the court:

G. W. PRESCOTT, *Clerk.*

(*The foregoing endorsed:*)

Territory of Minnesota. Supreme court. William Brewster and others, pl'ffs in error, against William Wakefield, def't in error. Claim and allowance of appeal to Supreme Court of the U.

S. Filed March 28, 1857. G. W. Prescott, clerk. Brisbin & Bigelow, att'ys for Wm. Brewster. St. Paul, M. T.

UNITED STATES OF AMERICA, *ss.*

To William Wakefield, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to an appeal filed in the clerk's office of the supreme court of the United States, in and for the Territory of Minnesota, on the 28th day of March, A. D. 1857, wherein William Brewster is appellant, and you are respondent, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Moses Sherburne, associate justice of the supreme court of the United States, in and for the Territory of Minnesota, at the city of St. Paul, in said Territory, this 28th day of March, A. D. 1857.

M. SHERBURNE, *Judge.*

(*The foregoing endorsed:*)

Supreme Court U. S. William Wakefield, respondent, agst. William Brewster, impleaded with others, appellant. Citation to respondent. We hereby admit due service of the within citation, by receipt of a copy thereof, this 28th March, A. D. 1857. Ames & Van Etten, atty's for respondent. Filed March 28, 1857. G. W. Prescott, clerk. Brisbin & Bigelow, atty's for appellant. St. Paul, M. T.

CLERK'S OFFICE, SUPREME COURT,
Territory of Minnesota, ss.

I, Geo. W. Prescott, clerk of the above named supreme court, certify the foregoing to be true and complete copies of the petition for, and allowance of appeal, and affidavit of amount in controversy in cause therein entitled, and citation to respondent, which are duly filed in my office.

Witness my hand and the seal of said supreme court, this 27th day of August, A. D. 1857.

GEO. W. PRESCOTT, *Clerk.*

The United States to the judge of our District Court, in the second judicial district, in the Territory of Minnesota and county of Ramsey, greeting:

Because in the record and proceedings, and also in the giving of judgment in an action which was in our said district court before you, between William Wakefield, plaintiff, and William Brewster, Emily Brewster, his wife, Michal Hickey, Patrick Donavan, Isaac Dixon, Alpheus G. Fuller, Mary Richardson, George Fuller, Jo-

seph E. Fullerton, and Richard D. Wood, Josiah Baun, Lewis W. Haywood, Benjamin V. Marsh, Hart A. Leavitt, and Edward Y. Townsend, partners, under the name and firm of Wood, Bacon & Co., defendants in a civil action to foreclose a mortgage, manifest error hath intervened, to the great damage of the said defendants, as by their complaint we are informed—we, being willing that the error, if any there be, should in due manner be overruled, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, then you send to our justices of our supreme court, distinctly and openly, under your seal, the record and proceedings of the plaint aforesaid, with all things concerning the same, and this writ, so that they may have them at the court-room in the Capitol, in the city of St. Paul, on the second Monday of January next, that the records and proceedings aforesaid being inspected, we may cause to be further done thereupon for correcting that error what of right and according to the law and custom of the Territory of Minnesota ought to be done.

Witness William H. Welch, esquire, chief justice of said supreme court, at St. Paul, this seventh day of August, A. D. 1856.

[L. S.] GEO. W. PRESCOTT, *Clerk.*

BRISBIN & BIGELOW, *Att'ys.*

To the Honorable judges of the Supreme Court of Minnesota, Territory of Minnesota:

The return to this writ appears by the schedule hereto annexed.

The answer of the judge of the district court within named.

Attest: GEO. W. PRESCOTT, *Clerk.*

(*The foregoing endorsed:*)

In the supreme court. Writ of error, issued Aug. 7, 1856, No. 1,079. Rec'd in dist. court, Ramsey county, Aug. 7, 1856. G. W. Prescott, clerk.

Territory of Minnesota.—District Court, 2d judicial district, county of Ramsey.

WILLIAM WAKEFIELD
against
WILLIAM BREWSTER, Emily L. Brewster, his wife, Michael Hickey, Patrick Donavan, Isaac Dixon, Alpheus G. Fuller, Mary Richardson, George Fuller, Joseph E. Fullerton, and Richard D. Wood, Josiah D. Bacon, Lewis W. Haywood, Benjamin V. Marsh, Hart A. Leavitt, and Edward Y. Townsend, partners, under the name and firm of "Wood, Bacon & Co.," Defendants.

To the above named defendants you, and each of you, are hereby summoned and required to answer the complaint in this action, which complaint has been duly filed in the office of the clerk of the said district court, in the county of Ramsey, in the second judicial district aforesaid, and to serve a copy of your answer to the said complaint upon us, the subscribers, at our office in the city of St. Paul, in said county, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will apply to the court for the relief demanded in this complaint.

Dated at St. Paul, the 28th day of August, 1855.

AMES & VAN ETTEN,
Plaintiff's Att'ys.

(*The foregoing endorsed:*)

RAMSEY Co., *ss.*

I hereby certify, that on the 31st day of August, at the city of St. Paul, M. T., I served this summons upon Emily L. Brewster, wife of William L. Brewster, Michael Hickey, Patrick Doniver, Alpheus G. Fuller, and Mary Richardson, part of the within named defendants, by giving to each and every of them personally a certified copy thereof. I also further certify, that I served this summons upon George Fuller on the first day of September, and on Joseph E. Fullerton on the 30th of September, by giving to each of them personally a certified copy. I also further certify, that I made dilligent search and inquiry for Isaac Dixon, Richard D. Wood, Josiah L. Bacon, Lewis W. Haywood, Benjamin V. Marsh, Hart A. Leavitt, and Edward E. Towsend, defendants named within, but cannot find them within my county. Ames & Van Etten, plff's attorneys; A. M. Fridley, sheriff, by A. W. Tullis, deputy.

I hereby certify, that I served this summons upon William Brewster, at St. Paul, one of the within named defendants, by giving to him personally a certified copy thereof. Done at St. Paul, Sept. 8th, 1855.

A. M. FRIDLEY, *Sheriff.*
By A. W. TULLIS, *Deputy.*

My fees:	Service,	8 00
	8 copies,	4 00
	Mileage,	1 60
		$13 60

District Court, 2d judicial district, county of Ramsey.
William Wakefield against William Brewster and others.
Summons.—Filed June 9th, 1856.

G. W. PRESCOTT, *Clerk.*

Territory of Minnesota.—District Court, 2d judicial district, county of Ramsey.

WILLIAM WAKEFIELD
against
WILLIAM BREWSTER, and EMILY L. BREWSTER, his wife, Michael Hickey, Patrick Donavan, Isaac Dixon, Alpheus G. Fuller, Mary Richardson, George Fuller, Joseph E. Fullerton, and Richard D. Wood, and Josiah Bacon, and Lewis W. Hayward, Benjamin V. Marsh, Hart A. Leavitt, and Edward Y. Townsend, partners under the name and firm of Wood, Bacon & Co., Defendants.

William Wakefield, the above named plaintiff, respectfully states and shows to this court, that heretofore on the (11) eleventh day of July, in the year A. D. 1854, William Brewster, one of the above named defendants, made his certain promissory note in writing, bearing date on that day and year, whereby he promised to pay twelve months after the date thereof, to the order of Joseph Wakefield, the sum of five thousand five hundred and eighty-three dollars and seventy-five cents with interest thereon at the rate of twenty per cent. per annum from the date thereof, for value received, and then and there delivered the same to the said Joseph Wakefield.

And the said defendant, William Brewster, also then and there, to wit, at St. Paul, in the Territory of Minnesota, on the eleventh (11) day of July, A. D. 1854, aforesaid, made his certain other and further promissory note in writing, and signed the same, bearing date on that day and year, whereby he promised to pay to the order of the said Joseph Wakefield the further sum of two thousand dollars twelve months after the date thereof, with interest thereon at the rate of two per cent. per month from the date thereof, and then and there also delivered the said promissory note last above described to the said Joseph Wakefield, as by the said two promissory notes above described, ready to be produced as this court shall direct, will more fully appear.

And the plaintiff further states and shows to this court, that in order to secure the payment of the principal and interest mentioned in the said two promissory notes above described, and also to secure the payment of a certain other promissory note, made by the said William Brewster, bearing date on the day and year last aforesaid, for the sum of one thousand dollars, payable to the order of the said Joseph Wakefield six months after the date thereof, with interest at the rate of two per cent. per month thereon, which last described note for one thousand dollars and interest has been paid. The said William Brewster, and Emily L. Brewster, his wife, did

at the same time, to wit, on the 11th day of July, 1854, aforesaid, execute under their hands and seals respectively, and deliver to the said Joseph Wakefield, a mortgage bearing date to the day and year last aforesaid, and conditioned for the payment of the said three promissory notes, and principal and interest thereon mentioned—that is to say, the sum of one thousand dollars in six months, (meaning six months from the date thereof,) with interest at the rate of two per cent per month, and the further sum of two thousand dollars in twelve months, (meaning twelve months from the date thereof,) with interest at the rate last mentioned, (meaning with interest on the said sum of two thousand dollars at the rate of two per cent. per month from the date thereof,) also the further sum of five thousand five hundred and eighty-three and seventy-five hundredths dollars, with interest thereon at the rate of twenty per cent. per annum, (meaning with interest thereon at the rate of twenty per cent. per annum from the date thereof,) according to the said three several promissory notes above described, by which said mortgage the defendants, William Brewster and Emily L. Brewster, mortgaged, granted, bargained and sold unto the said Joseph Wakefield, and to his heirs and assigns, certain lands and real estate, lying, situate, and being in the county of Ramsey, and Territory of Minnesota, and described in said mortgage as follows: that is to say, "beginning at a stake thirteen (13) chains and eighty-three (83) links west from the centre of section number thirty-one (31), in township No. twenty-nine (29) north, of range twenty-two (22) west; thence north, eighty-nine (89) degrees and thirty (30) minutes west, six (6) chains and twenty-one (21) links to a post; thence north, fifteen minutes west, eight (8) chains and thirty-eight and one-fourth ($88\frac{1}{4}$) links to a post; thence north, seventy (70) degrees seven (7) minutes and fifteen (15) seconds east, one chain and thirty-two and two-thirds ($32\frac{2}{3}$) links to a post; thence south, forty (40) degrees east, nine (9) chains and eighty-two (82) links to a post in Vetal's line; thence south, forty-three (43) degrees and forty (40) minutes west, one (1) chain and ninety (90) links, to the place of beginning, containing four and nineteen hundredths ($4_{\frac{19}{100}}$) acres, more or less; and also the west half of the northwest quarter of section No. thirty-one (31), in township No. twenty-nine (29) north, of range twenty-two (22) west, containing seventy (70) acres and twenty-six ($26_{\frac{1}{100}}$) one-hundredths of an acre."

Which said mortgage was duly acknowledged, and was afterwards duly recorded as a mortgage in the office of the register of deeds, in the said county of Ramsey, on the twelfth (12) day of July, A. D. 1854, at nine o'clock in the forenoon of that day, in book "C" of the records of mortgages, on pages 476 and 477, as by the said mortgage, and the certificate of acknowledgment, and

of the recording thereof, endorsed thereon, and ready to be produced and proved, will more fully appear.

And the plaintiff further states and shows, that afterwards, to wit, on or about the thirtieth (30) day of October, A. D. 1854, the said Joseph Wakefield, mortgagee therein mentioned, for a good and valuable consideration, to wit, the sum of ten thousand dollars to him paid by the plaintiff, duly sold, assigned, and transferred the said mortgage, and all indebtedness, and sums of money thereby secured, and all his right, title, and interest in and to the said mortgaged premises and estate within described to the plaintiff, and then and there, at the time last aforesaid, endorsed and delivered the said promissory notes hereinbefore described, together with the said mortgage, to the plaintiff.

And the plaintiff further states and shows to this court, that he is now the lawful owner and holder of the said mortgage and of the said two promissory notes first above described, bearing date on the eleventh day of July, A. D. 1854, and each payable twelve months after the date thereof respectively, one of which said promissory notes is for the sum of two thousand dollars, with interest thereon at the rate of two per cent. per month, and the other for the sum of five thousand five hundred and eighty-three dollars and seventy-five cents, with interest thereon at the rate of twenty per cent. per annum, as hereinbefore described.

The plaintiff further states and shows to this court, that there is now remaining due to the plaintiff, upon one of the said promissory notes above described, secured by the said mortgage, the sum of two thousand dollars principal, together with the interest thereon accrued, at the rate of two per cent. per month from the 11th day of July, A. D. 1854, and that there now remains due to the plaintiff upon the other said promissory note, secured by the said mortgage as aforesaid, the further sum of five thousand five hundred and eighty-three dollars seventy-five cents principal, together with the interest thereon accrued, at the rate of twenty per cent. per annum from the 11th day of July, A. D. 1854, aforesaid, which sums have not been paid, nor any part thereof.

And no proceedings at law or otherwise have been commenced or had for the recovery of the debt secured thereby, or any part thereof, and no part thereof has been collected or paid.

And the plaintiff further states, and shows to the court, that the defendants above named other than the said William Brewster, and Emily Brewster, his wife, have or claim to have respectively some title to and interest in and liens upon the said mortgaged premises as judgment creditors of the said defendant, William Brewster, and as purchasers of the said premises, and as grantors thereof from the said defendant, William Brewster, subsequent to the execution and recording of the mortgage aforesaid, as the plaintiff is informed and believes, and which titles and interest

and liens have accrued subsequent to the lien of said mortgage, and are subject thereto.

Therefore the plaintiff demands the judgment or decree of this court, that the said defendants, and all persons claiming under them or any of them subsequent to the commencement of this action, may be forever barred and foreclosed of all right, title, claim, lien, and equity of redemption in or to the said mortgaged premises, or any part thereof, and that the said premises may be adjudged or decreed to be sold according to law, and that the moneys arising from the sale thereof be paid to the plaintiff upon the amount due to the plaintiff for the principal and interest due upon said promissory notes and mortgage, so far as the moneys arising from said sale will pay the same, and that the defendant, William Brewster, may be judged or decreed to pay the balance (if any) which may remain due after applying all the moneys arising from said sale to the payment of the amount due to the plaintiff as aforesaid, together with the costs of this action.

And that the plaintiff may have such further or other judgment or relief as shall be just and equitable in the premises.

AMES & VAN ETTEN,
Plaintiff's Attorneys.

TERRITORY OF MINNESOTA,
County of Ramsey, ss.

Michael E. Ames came personally before me, and being duly sworn, says that he is one of the attorneys for the plaintiff in the above entitled action; that he has read the foregoing complaint, and that the same is true of his own knowledge, except as to matters which are therein stated on information or belief; and as to those matters, that he verily believes it to be true. That his knowledge and the grounds of his belief on the subject are, that the mortgage mentioned and described in the foregoing complaint, together with the two promissory notes, both bearing date on the 11th day of July, 1854, one for five thousand five hundred and eighty-three and $\frac{75}{100}$ dollars, payable twelve months after date, to the order of the said Joseph Wakefield, with interest, at the rate of two per cent. per month, both described in the above complaint, were all delivered to this affiant and his law partner, for foreclosure and collection, on or about the 15th day of August, 1855, together with an assignment and transfer in writing under seal, made by the said Joseph Wakefield, the mortgagee, to the plaintiff, and bearing date on the 30th day of October, 1854, by the terms of which the said Joseph Wakefield duly sold, assigned and transferred the said mortgage and promissory notes, and the indebtedness secured thereby to the plaintiff, his heirs and assigns, by the said William Wakefield, the plaintiff above named, and the same are all now in this affiant's possession; that the said plaintiff then stated to this affiant that the said notes above described, and the principal and

interest thereof, were wholly due and unpaid, and that the said mortgage was unsatisfied and in full force, and that he (the plaintiff) was the legal owner and holder of the said mortgage and notes; all of which statements and facts so made and communicated by the plaintiff affiant believes to be true, and the said mortgage and two promissory notes have remained ever since, and still are in affiant's possession, and the same have not since been paid, nor any part thereof.

And affiant further says, that he is well acquainted with the handwriting of the defendant, William Brewster, and knows the signature purporting to be his to said mortgage and notes, and each of them respectively, to be his genuine signatures.

And the said promissory notes are each of them endorsed by Joseph Wakefield, the payee therein mentioned, in his genuine handwriting, with which affiant is also acquainted and well knows, and the said mortgage and notes and each of them appear on their face wholly unsatisfied and unpaid.

And affiant further says, that the reason why the foregoing complaint is not verified by the plaintiff is, that that the said plaintiff is now absent from the county of Ramsey and Territory of Minnesota, where his attorneys reside.

MICHAEL G. AMES.

Subscribed and sworn to before me this 28th day of Aug., A. D. 1855.

PARKER PAINE, *Notary Public.*

(*The foregoing endorsed:*)

District court 2d district, county of Ramsey. William Wakefield ag'st William Brewster and others. Foreclosure complaint. Filed August 28, 1855. Geo. W. Prescott, clerk. Ames & Van Etten, plaintiff's attorneys.

Territory of Minnesota.—District Court, 2d district, Ramsey county.

WILLIAM WAKEFIELD
against
WILLIAM BREWSTER, EMILY L. BREWSTER his wife, Michael Hickey, Patrick Donavan, Isaac Dixon, Alpheus G. Fuller, Mary Richardson, George Fuller, Joseph E. Fullerton, and Richard D. Wood, Josiah Bacon, Lewis W. Hayward, Benjamin V. Marsh, Hart A. Leavitt, and Edward Y. Towsend, partners under the name and firm of Wood, Bacon & Co., Defendants.

COUNTY OF RAMSEY, *ss.*

Michael E. Ames came personally before me, and being duly sworn, says that he is one of the attorneys of record for William Wakefield, the plaintiff in the above entitled action, and that the action is brought for the purpose and object of foreclosing a certain mortgage executed by the defendants William Brewster and Emily L. Brewster his wife, and bearing date on the eleventh day of July, 1854, by them duly acknowledged, to one Joseph Wakefield, conditioned for the payment of three several promissory notes, bearing date on the same day aforesaid, made by the defendant William Brewster, one of said notes being for the sum of one thousand dollars, payable six months from the date thereof, to the order of the said Joseph Wakefield, with interest at the rate of two per cent. per month; another of the three said promissory notes for the sum of two thousand dollars, payable twelve months from the date thereof, to the order of the said Joseph Wakefield, with interest thereon at the rate of two per cent. per month; and the other and third promissory note aforesaid is for the further sum of five thousand five hundred and eighty-three dollars and seventy-five cents, with interest thereon at the rate of twenty per cent. per annum, and the two last promissory notes above described and secured by the said mortgage, and the principal and interest thereof remain wholly unpaid, and there is now claimed to be due, and is now due thereon to the plaintiff, upon one of the said promissory notes, the sum of two thousand dollars principal, and the interest accrued thereon from the 11th day of July, 1854, at the rate of two per cent. per month.

And there is now claimed to be due, and is now due and owing upon the other said promissory note the sum of five thousand five hundred and eighty-three dollars and seventy-five cents principal, with interest thereon at the rate of twenty per cent. per annum from the 11th day of July, 1854, aforesaid, the payment of which sums are covered and secured by the said mortgage, which mortgage was afterwards duly recorded in the office of the register of deeds of Ramsey county aforesaid, as a mortgage; and afterwards, on or about the 30th day of October, 1854, the said mortgage and promissory notes given therewith, above described, were sold, and signed and delivered by the said Joseph Wakefield to the above named plaintiff, and the said plaintiff is now the owner and holder of the same, and the said mortgaged premises described in and covered by the said mortgage is certain real estate and appurtenances belonging thereto, situated and lying in the county of Ramsey and Territory of Minnesota aforesaid, all of which will more fully appear and with greater certainty by the said mortgage and the record thereof, and from the complaint on file in this action, to which reference is here made; and the complaint in the above entitled action has been duly filed in the office of the clerk of the said dis-

trict court at St. Paul, in the county of Ramsey aforesaid, setting forth and containing the cause of action, and stating the relief demanded by the plaintiff in the action, and to which reference is here made for greater certainty.

And a summons has been duly issued in the action and delivered to the sheriff of Ramsey county aforesaid, to serve upon the defendant, and return; that the same has been duly returned by the said sheriff; and by his return in writing endorsed thereon, it appears that Isaac Dixon and Richard D. Wood, Josiah Bacon and Lewis W. Hayward, Benjamin V. Marsh, Hart A. Leavitt and Edward Y. Towsend, defendants above named, cannot be found within the county of Ramsey aforesaid. And the defendants above named, other than the said William Brewster and Emily L. Brewster his wife, have or claim to have, respectively, some title to, or interest in, and liens upon the said mortgaged premises, (in the mortgage described,) as judgment creditors of the said defendant William Brewster, and as purchasers of and grantees of the said William Brewster, defendant, subsequent to the execution and recording of the said mortgage; and affiant further says, that Isaac Dixon and Richard D. Wood, Josiah Bacon, Lewis W. Hayward, Benjamin V. Marsh, Hart A. Leavitt and Edward Y. Towsend, defendants last above named, do not, or any of them, reside within the Territory of Minnesota aforesaid, but that they are all non-residents of said Territory and now absent therefrom, as the said plaintiff and this affiant are informed and believe to be true.

Therefore a personal service of the summons in this action cannot be made upon the defendants last above named, or any of them; and this affiant further says, that he has made diligent inquiry and search to ascertain the place or places of residence of the several defendants last above named, and is wholly unable to ascertain the place where the said defendant Isaac Dixon now resides; that the said Isaac Dixon's place of residence is unknown to the plaintiff and his attorney; that affiant is informed and believes to be true, that the defendants Richard D. Wood, Josiah Bacon, Lewis W. Hayward, Benjamin V. Marsh, Hart A. Leavitt and Edward Y. Towsend reside in the city of Philadelphia, in the State of Pennsylvania, and are copartners, doing business there under the name, style and firm of "Wood, Bacon & Co."

Therefore the plaintiff prays that an order may be granted and made in the above entitled action by the said district court, or the judge thereof, directing that the service of the summons in the said action be made upon the said defendants last above named, by publication, or in such other or further manner as the said court or judge thereof may direct.

MICHAEL E. AMES.

Subscribed and sworn to before me this 4th day of Sept., 1855.

M. SHERBURNE, *Judge.*

Territory of Minnesota.—District Court, 2d judicial district, Co. of Ramsey.

WILLIAM WAKEFIELD
against
WILLIAM BREWSTER, EMILY L. BREWSTER, his wife, Michael Hickey, Patrick Donavan, Isaac Dixon, Alpheus G. Fuller, Mary Richardson, George Fuller, Joseph E. Fullerton, and Richard D. Wood, Josiah Bacon, Lewis W. Hayward, Benjamin V. Marsh, Hart A. Leavitt, and Edward Y. Townsend, partners under the name and firm of "Wood, Bacon & Co.," Defendants.

It appearing to my satisfaction, by the affidavits of Michael E. Ames, one of the plaintiff's attorneys, and from the complaint and the return of the sheriff upon the summons on file in the cause, that a cause of action exists against the above-named defendants, and that they are all proper parties defendants in the above entitled action; and that Isaac Dixon and Dichard D. Wood, Josiah Bacon, Lewis W. Hayward, Benjamin V. Marsh, Hart A. Leavitt, and Edward Y. Towsend, defendants above named, are not, or any of them, residents of the Territory of Minnesota, and cannot, after due diligence and inquiry, be found therein, and that they have property within said Territory:

I do therefore order and direct that the service of the summons in this action be made upon the defendants, Isaac Dixon and Richard D. Wood, Josiah Bacon, Levis W. Hayward, Benjamin V. Marsh, Hart A. Leavitt, and Edward Y. Townsend, above named, by the publication thereof, once in each week for six successive weeks, in the "Minnesota Pioneer," a weekly newspaper printed and published at the city of St. Paul, in the county of Ramsey, and Territory aforesaid; that the first publication be made within ten days from the date of this order.

And it is further ordered, that copies of the summons and complaint in this action be forthwith deposited in the post office, directed to the defendants, Richard D. Wood, Josiah Bacon, Lewis W. Hayward, Benjamin V. Marsh, Hart A. Leavitt, and Edward Y. Townsend, at the city of Philadelphia, in the State of Pennsylvania.

Dated at St Paul, September 5, 1855.

M. SHERBURNE, *Judge.*

(*The foregoing endorsed:*)

District court, second district, county of Ramsey. William Wakefield against William Brewster and others. Affidavits of no answer, and order of publication. Filed Sept. 5, 1855. Geo. W. Prescott, clerk. Ames & Van Etten, plaintiff's attorneys.

Territory of Minnesota.—District Court, 2d district, county of Ramsey.

WILLIAM WAKEFIELD
against
WILLIAM BREWSTER, EMILY L. BREWSTER, his wife, Michael Hickey, Patrick Donovan, Isaac Dixon, Alpheus G. Fuller, Mary Richardson, George Fuller, Joseph E. Fullerton and Richard D. Wood, Josiah D. Bacon, Levis W. Hayward, Benjamin V. Marsh, Hart A. Leavitt, and Edward Y. Townsend, partners under the name and firm of Wood, Bacon & Co., Defendants.

To the above named defendants:

You, and each of you, are hereby summoned and required to answer the complaint in this action, which complaint has been duly filed in the office of the clerk of said district court, in the county of Ramsey, in the 2d judicial district aforesaid, and to serve a copy of your answer to the said complaint upon us, the subscribers, at our office in the city of St. Paul, in said county, within twenty days after the service of this summons on you exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will apply to the court for the relief demanded in the complaint.

AMES & VAN ETTEN,
Plaintiff's Attorneys.

Dated at St. Paul, the 28th day of August, A. D. 1855.

Territory of Minnesota.—District Court, 2d jud'l dist., Co. of Ramsey.

I, George W. Prescott, clerk of the above entitled district court, do hereby certify that the above and foregoing is a true copy of the original summons issued in the action therein entitled, and now on file in said cause in the office of the clerk of said court.

In witness whereof I have hereunto set my hand and affixed the seal of said district court, at St. Paul, in said county, this 5th day of September, A. D. 1855.

GEO. W. PRESCOTT, *Clerk.*

COUNTY OF RAMSEY, *ss.*

Earl S. Goodrich came personally before me, and, being duly sworn, deposes and says: That he is the editor and publisher of the weekly newspaper called the Minnesota Pioneer, published at St. Paul, in said county, and has been the publisher thereof for more than one year last past; and further says, that the summons and official certificate thereto, of which summons and certificate the annexed is a true printed copy, pasted hereon, was printed and

published in the said Weekly Minnesota Pioneer once in each and every week for six successive weeks and upwards, from the 6th day of September, 1855, and between that time and the making of the affidavits.

EARL S. GOODRICH.

Subscribed and sworn to before me this 22d day of October, 1855.

GEORGE W. PRESCOTT,
Clerk Dist. Court.

Fees for advertising, $6 60.

(*The foregoing endorsed*:)

District court, 2d judicial district, Co. of Ramsey. William Wakefield against William Brewster and others. Affidavit of publication of summons. Filed June 9, 1856. George W. Prescott, clerk. Ames & Van Etten, plaintiff's attorneys.

Territory of Minnesota.—District Court, 2d judicial district, county of Ramsey.

WILLIAM WAKEFIELD, Plaintiff,
against
WILLIAM BREWSTER, EMILY L. BREWSTER, his wife, Michael Hickey, Patrick Donovan, Isaac Dixon, Alpheus G. Fuller, Mary Richardson, George Fuller, Joseph E. Fullerton and Richard D. Wood, Josiah Bacon, Lewis W. Hayward, Benjamin V. Marsh, Hart A. Leavitt, and Edward Y. Townsend, partners, under the name and firm of Wood, Bacon & Co., Defendants.

COUNTY OF RAMSEY, *ss.*

Harvey Officer, a witness of lawful age, came personally before me, and being duly sworn, says that he is a clerk in the law office of Ames & Van Etten, who are the attorneys of record for the plaintiff in the above entitled action; and further states and says, that on the sixth (6) day of September, A. D. 1855, at the request of and by direction of the plaintiff's attorneys aforesaid, he deposited and mailed true copies of the original summons and complaint in this action, in the post office at the city of St. Paul, in the county of Ramsey aforesaid, in an envelope sealed up and directed to the above named defendants, Richard D. Wood, Josiah Bacon, Lewis W. Hayward, Benjamin V. Marsh, Hart A. Leavitt, and Edward Y. Townsend, partners of the firm of "Wood, Bacon & Co.," at the city of Philadelphia, State of Pennsylvania, and prepaid the postage thereon.

HARVEY OFFICER.

Subscribed and sworn to before me the 24th day of September, 1855.

PARKER PAINE,
Notary Public, M. T.

(*The foregoing endorsed:*)

District court, 2d judicial district, county of Ramsey. William Wakefield against William Brewster and others. Affidavit of depositing in post office copies of summons and complaint. Filed June 29, 1856. Geo. W. Prescott, clerk. Ames & Van Etten, plaintiff's attorneys.

Territory of Minnesota.—District Court, 2d judicial district, county of Ramsey.

WILLIAM WAKEFIELD
against
WILLIAM BREWSTER and EMILY L. BREWSTER, his wife, Michael Hickey, Patrick Donovan, Isaac Dixon, Alpheus G. Fuller, Joseph E. Fullerton, and Richard D. Wood, Josiah Bacon, Lewis W. Hayward, Benjamin V. Marsh, Hart A. Leavitt, and Edward Y. Townsend, partners under the name and firm of "Wood, Bacon & Co.," Defendants.

COUNTY OF RAMSEY, *ss.*

Michael E. Ames came personally before me, and being duly sworn, says that he is one of the attorneys for the plaintiff in the above entitled action; that more than twenty (20) days have elapsed and passed since the service of the summons was made and completed upon all of the above named defendants in this cause, as appears from the papers on file therein; and that no answer has been served, and no copy of an answer or demurrer to the complaint in this cause has been received by the plaintiff's attorneys, or served upon them or either of them, as required by the summons or otherwise.

MICHAEL E. AMES.

Subscribed and sworn to before me the 9th day June, 1856.

HARVEY OFFICER,
Notary Public, M. T.

(*The foregoing endorsed:*)

District court, 2d district, county of Ramsey. William Wakefield against William Brewster and others. Affidavit of no answer. Filed June 9th, 1856. George W. Prescott, clerk. Ames & Van Etten, pl'ff's att'ys.

Territory of Minnesota.—District Court, 2d judicial district, county of Ramsey.

WILLIAM WAKEFIELD
against
WILLIAM BREWSTER, EMILY L. BREWSTER, his wife, Michael Hickey, Patrick Donovan, Isaac Dixon, Alpheus G. Fuller, Mary Richardson, George Fuller, Joseph E. Fullerton, and Richard D. Wood, Josiah Bacon, Lewis W. Hayward, Benjamin V. Marsh, Hart A. Leavitt, and Edward Y. Townsend, partners under the name and firm of "Wood, Bacon & Co.," Def'ts.

GENTLEMEN: Take notice that an application founded upon the complaints and summons, and the officer's returns endorsed thereon, and the order and affidavits on file in this cause, and the evidence to be produced and given therein, will be made on behalf of the plaintiff to the Hon. Moses Sherburne, judge of the district court, in the second judicial district and county of Ramsey aforesaid, at the court-house in the city of St. Paul, in said county, on the twentieth (20) day of June, A. D. 1856, at nine o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for the relief and judgments demanded in the complaint in this action.

Dated June 29th, 1856.

Yours, respectfully,
AMES & VAN ETTEN,
Plaintiff's Attorneys.

To Messrs. BRISBIN & BIGELOW,
Attorneys of Defendants, Wm. Brewster and Emily L. Brewster.

(*The foregoing endorsed:*)

District court, 2d district, county of Ramsey. William Wakefield against William Brewster and others. Notice of application for judgment. We admit due service of a copy of the within notice on us, at our office, this 9th day of June, 1856. Brisbin & Bigelow, att'ys for def't, Brewster. Ames & Van Etten, pl'ff's att'ys.

Territory of Minnesota.—District Court, 2d judicial district, county of Ramsey.

WILLIAM WAKEFIELD
against
WILLIAM BREWSTER, EMILY L. BREWSTER, his wife, Michael Hickey, Patrick Donovan, Isaac Dixon, Alpheus G. Fuller, and Mary Richardson, George Fuller, Joseph E. Fullerton, and Richard D. Wood, Josiah Bacon, Lewis W. Hayward, Benjamin V. Marsh, Hart A. Leavitt, and Edward Y. Townsend, partners under the name and firm of "Wood, Bacon & Co.," Defendants.

This action having been brought on to be heard on this twentieth (20) day of June, A. D. 1856, upon the complaint filed herein, and upon reading the affidavit of Earl S. Goodrich, the publisher of the "Minnesota Pioneer," a newspaper heretofore published weekly at the city of St. Paul, in the Territory of Minnesota, showing satisfactorily that the summons in this action has been printed and published in said newspaper once in each week for six successive weeks, from the sixth day of September, A. D. 1855, pursuant to and as directed by an order duly made and entered in this cause on the fifth (5) day of September, 1855; and it further appearing by the affidavit of Harvey Officer, that copies of the summons and complaint in this cause were deposited in the post office in the city of St. Paul, in the county and Territory aforesaid, on the 6th day of September, A. D. 1855, directed to the above named defendants, Richard D. Wood, Josiah Bacon, Lewis W. Hayward, Benjamin V. Marsh, Hart A. Leavitt, and Edward Y. Townsend, partners of the firm of "Wood, Bacon & Co.," at the city of Philadelphia, State of Pennsylvania, as directed by the order aforesaid; and it further appearing by the return of A. M. Fridley, then sheriff of the county of Ramsey aforesaid, endorsed upon the summons in this cause, that personal service thereof was duly made upon the other defendants, William Brewster, Emily L. Brewster, his wife, Michael Hickey, Patrick Donavan, Alpheus G. Fuller, Mary Richardson, George Fuller, and Joseph E. Fullerton above named;

And it further appearing by the affidavit of Michael E. Ames, one of the attorneys for the plaintiff, that more than twenty days have expired since the service of the summons upon the defendants as aforesaid, and that no answer has been served or copy of an answer or demurrer has been served upon or received by the plaintiff's attorneys, or either of them:

Upon filing the aforesaid affidavits, and after hearing the evi-

dence produced and given in the cause on the part of the plaintiffs, and the mortgage and the two promissory notes mentioned in the complaint, together with the assignment in writing thereof to the plaintiff, having been produced and proven, and it appearing that no payments have been made upon the said notes and mortgage, and that no part of the indebtedness secured thereby has been paid, but that there now remains and is justly due and owing thereon to the said plaintiff the sum of ten thousand six hundred and seventy dollars and seventy-seven cents, ($10,670 77,) principal and interest to the date hereof:

The defendant appearing by his counsel, and objecting that no more than 7 per cent. interest on said notes should be allowed after they became due and payable, which objection was overruled and the interest allowed, which is specified in the notes: Now, therefore, on motion of Ames & Van Etten, plaintiff's attorneys, it is ordered and adjudged, that the mortgaged premises described in the complaint in this action and hereinafter described, or so much thereof as may be sufficient to raise the aforesaid amount due to the plaintiff, for principal and interest and costs in the action, be sold at public auction, in the county of Ramsey, where the premises are situated, by the sheriff of said county.

That said sheriff give public notice of the time and place of such sale according to law, and the practice of this court, and that the plaintiff, or any of the parties to this action, may become the purchaser or purchasers of the premises at such sale.

That the said sheriff execute to the purchaser or purchasers thereof a deed or deeds of the mortgaged premises so sold, and that out of the money arising from such sale the said sheriff, after deducting the amount of his fees, and expenses of such sale, and any lien or liens for taxes or assessment upon said premises so sold, do pay to the plaintiff, or his attorneys, the sum of sixty-five dollars and forty-five cents, adjudged to the plaintiff for his costs, charges, and disbursements in this action; and also the sum of ten thousand six hundred and seventy dollars and seventy-seven cents, ($10,670 77,) for the amount found to be due as aforesaid to the plaintiff, upon the said notes and mortgage, together with legal interest thereon from the date hereof, or so much thereof as the purchase money of the said mortgaged premises, or moneys arising from the sale thereof, will pay off the same, and that the sheriff take receipts for the amount so paid, and file the same, with the report of the sale, and that he bring the surplus moneys arising from such sale, if any there be, into court without delay, to abide the further order of this court, and that he make a report of such sale and file it with the clerk of this court.

And it is further ordered and adjudged, that the defendants, and all persons claiming or to claim from or under them, or any of them, be forever barred and foreclosed of and from all equity of

redemption, right, claim or lien, in or upon or to the said mortgaged premises, in the complaint mentioned and hereinafter described, and every part and portion thereof.

Which said mortgaged premises are described as follows, to wit:

Certain lands and real estate lying, situate, and being in the county of Ramsey and Territory of Minnesota, and described in the said mortgage as follows, that is to say:

Beginning at a stake thirteen (13) chains and eighty-three (83) links west from the centre of section No. thirty-one, (31,) in township No. twenty-nine, (29,) north, of range twenty-two (22) west; thence north, eighty-nine (89) degrees and thirty (30) minutes west, six (6) chains and twenty-one (21) links to a post; thence north, fifteen (15) minutes west, eight (8) chains and thirty-eight and one-fourth ($38\frac{1}{4}$) links to a post; thence north, seventy (70) degrees seven (7) minutes and fifteen (15) seconds east, one chain and thirty-two ($32\frac{2}{3}$) and two-thirds links to a post; thence south, forty (40) degrees east, nine (9) chains and eighty-two (82) links to a post on Vetal's line; thence south, forty-three (43) degrees and forty (40) minutes west, one chain and ninety (90) links to the place of beginning, containing four and nineteen-hundredths ($4\frac{19}{100}$) acres, more or less; and also the west half of the northwest quarter of section No. thirty-one (31,) in township No. twenty-nine (29) north, of range twenty-two (22) west, containing seventy (70) acres and twenty-six ($\frac{26}{100}$) one-hundredths of an acre; together with all the hereditaments and appurtenances thereon or thereunto in any wise appertaining.

And it is further ordered and adjudged, that if the moneys arising from the sale of such mortgaged premises aforesaid shall be insufficient to pay the amount so found due to the plaintiff as aforesaid, with the interest and costs and expenses of such sale, that the said sheriff do specify the amount of such deficiency in his report of said sale, and that upon the filing and confirmation of said report, the defendant, William Brewster, who is personally liable for the debt secured by the said mortgage, do pay to the plaintiff the amount of such deficiency, with interest thereon from the date of the report of such sale, and that the plaintiff have execution therefor.

M. SHERBURNE, *Judge.*

Dated at St. Paul, June 20, 1855.

(*The foregoing endorsed:*)

District court, 2d judicial district, county of Ramsey. William Wakefield ag'st Wm. Brewster and others. Order and decree. Ames & Van Etten, pl'ffs attorneys.

CLERK'S OFFICE, DISTRICT COURT, 2D JUDICIAL DISTRICT,
Territory of Minnesota.

I, Geo. W. Prescott, clerk of the above named court, certify the

foregoing to be a true transcript of the judgment roll in the cause therein entitled, as the same appears on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court, at Saint Paul, in said Territory, this 10th day of October, 1856.

[SEAL.]

GEO. W. PRESCOTT, *Clerk*.

(*The foregoing endorsed:*)

Supreme court. William Brewster and others, pl'ffs in error, against Wm. Wakefield, def't in error. Return to writ of error sent to the dist. court of Ramsey county. Filed Oct. 10, 1856. G. W. Prescott, clerk.

Supreme Court.

WILLIAM BREWSTER, impl'd Pl'ff in Error,
against
WILLIAM WAKEFIELD, Def't in Error.

The following are the points and authorities upon which the pl'ff in error relies in the above entitled cause:

First. The court below erred in decreeing the payment of interest upon the promissory notes mentioned in the decree, at a greater rate than seven per cent. per annum from the maturity of the said notes, respectively, by the def't Brewster.

Second. The court below *below* erred in decreeing the payment out of the proceeds of the sale ordered in the decree, of interest upon the said promissory notes at any greater rate than seven per cent. per annum, from and after the maturity of the said notes.

Third. The said notes contained no express contract to pay interest after their maturity. The rate of interest specified in them, respectively, refers to, and is limited and controlled by, the time specified for its payment. No interest can, therefore, be recovered upon them from and after the time of their maturity, except as damages for the non-payment of principal when due; and as such, only at the rate fixed by statute in the absence of an express contract, viz: seven per cent. per annum.

Rev. Stat., page 155, chap. 35; Bander vs. Bander, 7 Barb. S. C. Rep., 560; Macumber vs. Dunllam, 8 Wen., 553; U. S. Bank vs. Chapin, 9 Wen., 471; Ludwick vs. Huntsinger, 5 Watts and Serg., 51, 60. Also cited in note to Chit. on Bills, (11 Am. from 9th Lond. ed.,) 682 marginal paging.

Clay vs. Drake, Minor, 164; Henry vs. Thompson, Minor, 209. To be found also in 2 U. S. Dig., p. 624, secs. 243 and 244.

BRISBIN & BIGELOW,
Att'ys for Pl'ff in Error.

Dated St. Paul, Jan'y 12, 1857.

(*The foregoing endorsed:*)

Supreme court. Wm. Brewster and wife, pl'ff in error, ag'st

Wm. Wakefield, def't in error. Points and authorities of pl'ff in error. Service of a copy of the within admitted this 12th Jan'y, 1857. Ames & Van Etten, att'ys for def't in error. Filed Jan. 14, 1857. G. W. Prescott, clerk.

In the Supreme Court.

WILLIAM BREWSTER and others, Pl'ffs in Error,
against
WILLIAM WAKEFIELD, Def't in Error.

The following points and authorities are relied upon by the defendant in error in the above entitled action:

First. The rates of interest are clearly expressed in the terms of the promissory notes and fixed by the contract of the parties, which the parties were competent to do, and the rates agreed upon is legal and valid by the provisions of our statute.

See R. S., page 155, chap. 35.

Second. It is the duty of the court to construe the contract and give it effect, according to the intention of the parties, at the time of making it, as gathered from the face of the instruments.

Story on Contracts, p. 556, secs. 633 and 634; 7 Barbour, S. C. Rep., 560, cited by pl'ff in error; Chitty on Contracts, p. 74, (7 Am. ed.)

Third. If the terms of the notes are ambiguous, or the intention of the parties appear, from the face of the notes, doubtful, they are to be taken and construed by their terms most strongly against the maker.

9 and 12 edition. See Chitty on Bills, p. 682, (note;) Chitty on Contracts, p. 95, and notes.

Fourth. The terms of the notes, and the manifest intention of the parties, was a contract on the part of the maker to pay the respective rates of interest mentioned in the notes, as well after maturity as before, until the principal sum should be paid.

15 Wendell Rep., p. 76; Fake vs. Eddy's Ex.

Fifth. That the judgment and decree of the court below was correct, and well supported by the evidence appearing from the notes and mortgage.

Yours, respectfully,

AMES & VAN ETTEN,
Attorneys and Counsel for Def't in Error.

Dated January 12, 1857.

(*The foregoing endorsed:*)

Supreme court. William Brewster and others, pl'ffs in error, against William Wakefield, def't in error. Points and authorities. Filed Jan'y 14, 1857. G. W. Prescott, clerk. Ames & Van Etten, att'ys and counsel for def't in error.

In the Supreme Court, at the January Term, 1857—January 29, A. D. 1857.

WILLIAM BREWSTER, EMILY L. BREWSTER, his wife, Michael Hickey, Patrick Donavan, Isaac Dixon, Alpheus G. Fuller, Mary Richardson, George Fuller, Joseph E. Fullerton, and Richard D. Wood, and Josiah Bacon, Lewis W. Hayward, Benjamin V. Marsh, Hart A. Leavitt, and Edward Y. Townsend, partners, under the name and firm of "Wood, Bacon & Co.," Plaintiffs in Error,
against
WILLIAM WAKEFIELD, Defendant in Error.

This cause having been brought into this court upon a writ of error issued out of this court to the district court of the county of Ramsey, in the second judicial district, and the cause having been fully heard here, and duly considered by this court, and it appearing to the court here that *no* error hath intervened, or exists in the proceedings, judgment, order and decree, of the said district court in the cause, as was alleged, and that the said judgment and decree of the district court rendered therein ought to be affirmed, and the decision of this court having been filed therein, whereby the aforesaid judgment and decree is affirmed:

Now, on motion of Ames & Van Etten, attorneys for the defendant in error, it is ordered and adjudged here by this court that the judgment, order, and decree of the district court aforesaid, made and entered in this cause, be, and the same is now, here by this court in all things affirmed.

And it is now here by this court further ordered, adjudged and decreed, that the mortgaged premises described in the complaint in this cause, and hereinafter described, or so much thereof as may be sufficient to raise the sum of ten thousand six hundred and seventy dollars and seventy-seven cents, (10,670 77,) the amount of the judgment and decree rendered in this cause in the district court aforesaid, together with ten per cent. thereon for the damages of the said defendant in error, amounting to the further sum of one thousand and sixty-seven dollars and seven cents, (1,067 07) which is awarded and adjudged by this court to the said William Wakefield, defendant in error here, for his damages, according to the statute in such case provided, and the legal interest which has accrued upon the amount of the said judgment and decree rendered in the cause in the district court aforesaid since the rendition and entry thereof, amounting to the further sum of eight hundred dollars and twenty-five cents, ($800 25) and amounting in the whole to the sum of twelve thousand five hundred and thirty-eight dollars and nine cents ($12,538 09) principal, interest and damages to the

date hereof, together with the costs of this court, be sold at public auction in the county of Ramsey, and Territory of Minnesota, where the mortgaged premises are situated, by the sheriff of said county.

That the said sheriff give public notice of the time and place of such sale according to law, and that the defendant in error, or any of the parties to this action, may become purchaser or purchasers of the premises at such sale.

That the said sheriff execute to the purchaser or purchasers thereof a deed, or deeds, of the mortgaged premises so sold, and that out of the moneys arising from such sale the said sheriff, after deducting the amount of his fees and expenses of such sale, and any lien or liens for taxes or assessments on said premises so sold, pay to the said William Wakefield, defendant in error in this court, or his attorneys, the sum of twelve thousand five hundred and thirty-eight dollars and nine cents, ($12,538 09) aforesaid, together with the legal interest thereon from the date hereof, and the further sum of fifty-nine dollars and eighty cents adjudged to the defendant in error for his costs, charges and disbursements in the cause in this court, or so much thereof as the proceeds and moneys arising from the sale of the said mortgaged premises will pay of the same, and that the sheriff takes receipts for the amount so paid, and file the same, with his report of the sale, with the clerk of this court, and that he bring the surplus moneys arising from such sale, if any there be, into court, to abide the further order of this court, and that he make a report of such sale and file it with the clerk of this court.

And it is further ordered, adjudged and decreed, by this court, that the plaintiffs in error herein, and all persons claiming, or to claim, from or under them, or any of them, be forever barred and foreclosed of and from all equity of redemption, right, claim or lien, in, upon, or to the said mortgaged premises in the complaint mentioned, and hereinafter described, and every part or portion thereof, which said mortgaged premises are described as follows, to wit:

Certain lands and real estate lying, situate, and being in the county of Ramsey, and Territory of Minnesota, and described in the said mortgage as follows, that is to say:

Beginning at a stake thirteen (13) chains and eighty-three (83) links west from the centre of section number thirty-one (31) in township number twenty-nine (29) north, of range twenty-two (22) west; thence north, eighty-nine (89) degrees and thirty minutes (30) west, six (6) chains and twenty-one (21) links to a post; thence north, fifteen (15) minutes west, eight (8) chains and thirty-eight and one-fourth (38¼) links to a post; thence north, seventy (70) degrees seven (7) minutes and fifteen seconds east, one chain and thirty-two and two-thirds (32⅔) links to a post; thence south, forty (40) degrees east, nine (9) chains and eighty-two (82) links to a

post; thence south, forty (40) degrees east, nine (9) chains and eighty-two (82) links, to a post on Vetal's line; thence south, forty-three (43) degrees and forty (40) minutes west, one (1) chain and ninety links to the place of beginning, and containing four and nineteen hundredths ($4\frac{19}{100}$) acres, more or less.

And also the west half of the northwest quarter of section number thirty-one (31) in township number twenty-nine (29) north, of range twenty-two (22) west, containing seventy (70) acres and twenty-six ($\frac{26}{100}$) one hundredths of an acre, together with all the hereditaments and appurtenances thereon or thereunto in any wise appertaining.

And it is further ordered, adjudged and decreed, that if the moneys arising from the sale of such mortgaged premises aforesaid shall be insufficient to pay the amount adjudged and decreed to the defendant in error as aforesaid, with the interest thereon, and the costs and expenses of such sale, that the said sheriff do specify the amount of such deficiency in his report of the sale, and that upon the filing and confirmation of such report the plaintiff in error, William Brewster, who is personally liable for the debt secured by the said mortgage, pay to William Wakefield, the defendant in error, the amount of such deficiency, with interest thereon from the date of the report of such sale, and that the said defendant in error have execution therefor.

A true record.
Attest: GEO. W. PRESCOTT, *Clerk.*

A true transcript of the record.
Attest: GEO. W. PRESCOTT, *Clerk.*

(*The foregoing endorsed:*)

Supreme Court. Wm. Brewster and others, pl'ffs in error, against Wm. Wakefield, def't in error. Judgment roll. Filed Jan'y 29, 1857. G. W. Prescott, clerk.

Supreme Court—Territory of Minnesota.

CLERK'S OFFICE, *ss.*

I, Geo. W. Prescott, clerk of the above named supreme court, certify the foregoing to be a full and correct transcript of the judgment roll in the cause therein entitled which is on file and made a record in said clerk's office.

Witness my hand and the seal of said supreme court, at St. Paul, this 4th day of November, A. D. 1857.
[SEAL.]
GEO. W. PRESCOTT, *Clerk.*

Filed 12th December, 1857.